



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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FEB 27 2002

Ref: 8EPR-EP

Mr. Robert Sakata, Chair
Water Quality Control Commission
4300 Cherry Creek Drive South
Denver, CO 80222-1530

Subject: EPA Action on Revisions to the Water
Quality Standards for Certain Animas and Florida
River Segments

Dear Mr. Sakata:

The U.S. Environmental Protection Agency (EPA) has completed its review of the water quality standards revisions adopted by Colorado's Water Quality Control Commission (Commission) for certain segments of the Animas and Florida Rivers in the San Juan and Dolores River basin (Regulation 34). The revisions addressed today were adopted on October 9, 2001 (effective February 20, 2002) and submitted to EPA Region 8 for approval with a letter dated October 18, 2001. The submission letter included an opinion signed by Colorado's Attorney General certifying that the standards were duly adopted pursuant to State law. Receipt of the revised standards on October 22, 2001 initiated EPA's review pursuant to § 303(c) of the Act. EPA has completed its review of the revisions, and this letter is to notify you of our action.

The Region commends the Commission, the Animas River Stakeholders Group, the Water Quality Control Division, the Division of Wildlife, and the other parties to this rulemaking for their collaborative efforts to review and revise the water quality standards for these segments. The upper Animas River basin is severely polluted as a result of extensive hard rock mining activities. Identifying attainable water quality goals presented a number of complex technical and scientific challenges. Although some issues were not adequately resolved, certain information gaps remain, and the standards will require further review and revision as new information becomes available, the Region believes the adopted standards describe useful water quality goals that will assist efforts to achieve improved water quality in this basin. The Region appreciates the many hours of hard work that supported this rulemaking process, and congratulates the Commission and the parties for establishing standards that will substantially contribute to the ongoing Animas River water quality restoration efforts.



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AGENCY REVIEW

Clean Water Act (CWA) § 303(c)(2) requires States and authorized Indian Tribes to submit new or revised water quality standards to EPA for review. EPA is to review and approve or disapprove the submitted standards. Pursuant to CWA § 303(c)(3), if EPA determines that any standard is not consistent with the applicable requirements of the Act, the Agency shall, not later than the ninetieth day after the date of submission, notify the State or authorized Tribe and specify the changes to meet the requirements. If such changes are not adopted by the State or authorized Tribe within ninety days after the date of notification, EPA shall promulgate the needed standard pursuant to CWA § 303(c)(4). The Region's goal has been, and will continue to be, to work closely with States and authorized Tribes throughout the State or Tribal standards revision process as a means to avoid the need for such disapproval and promulgation actions.

TODAY'S ACTION

I am pleased to inform you that today the Region is approving, without condition, the new or revised water quality standards described above. The basis for our approval action is discussed in Enclosure 1. As a result of today's approval action, the Region considers the issues identified in our August 27, 1998 disapproval action letter to be resolved. The Region appreciates the efforts by the Commission and the parties to resolve these challenging water quality standards issues.

It is important to note that EPA's approval of the State's water quality standards is considered a federal action which may be subject to the Section 7 consultation requirements of the Endangered Species Act (ESA). Section 7 of the ESA states that "all other federal agencies shall ... utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species..." and "each federal agency ... shall ... insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined to be critical..."

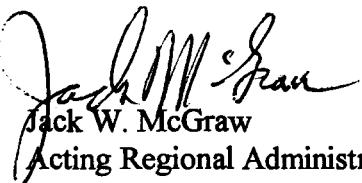
The Region has concluded that today's approval of the revised water quality standards is not likely to adversely affect any federally listed endangered, threatened, or proposed species. The Colorado Field Office of the U.S. Fish and Wildlife Service provided written concurrence with this finding in a February 15, 2002 letter.

The water quality standards approvals in today's letter apply only to water bodies in the State of Colorado, and do not apply to waters that are within Indian Country, as defined in 18 U.S.C. Section 1151. Today's letter is not intended as an action to approve or disapprove water quality standards applying to waters within Indian Country. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities for water quality standards for waters within Indian Country.

CONCLUSION

EPA Region 8 congratulates the Commission and the parties to this rulemaking for achieving significant improvements to the water quality standards for the Animas and Florida Rivers. The Region looks forward to working with the State to make additional improvements to these water quality standards as additional information becomes available. If you have questions concerning this letter, please call me or Max Dodson, Assistant Regional Administrator, Office of Ecosystems Protection and Remediation at 303-312-6598, or have your staff contact David Moon at 303-312-6833 or Bill Wuerthele, Regional Water Quality Standards Coordinator, at 303-312-6943.

Sincerely,



Jack W. McGraw
Acting Regional Administrator

Enclosure

cc: J. David Holm, Director, Water Quality Control Division

**RATIONALE FOR EPA'S ACTION ON
THE REVISIONS TO THE WATER QUALITY STANDARDS FOR
THE ANIMAS AND FLORIDA RIVER SEGMENTS**

The discussion below is organized as follows: (1) EPA's Clean Water Act (CWA) approval action, and (2) EPA's "not likely to adversely affect" finding for purposes of Endangered Species Act (ESA) requirements.

I. BASIS FOR EPA'S CWA APPROVAL ACTION

EPA has concluded that the water quality standards revisions approved today are consistent with the requirements of the Clean Water Act and EPA's implementing regulations. EPA approves these revisions without condition. Below, the revisions in several categories are described and the rationale for approval is presented.

Recreation Designated Uses and Numeric Standards

Consistent with section 31.13 of the Basic Standards and Methodologies for Surface Waters (Basic Standards), the recreation use was upgraded from Class 2 to Class 1a for Animas/Florida segments 2, 3a, 6, 7, 8, 9, 13a, 13b, and 15. The recreation use was revised from Class 1 to Class 1a, for Animas/Florida segments 1, 4a, 4b, 5a, 10, 11a, 12a, 12b, and 14. For segment 3b, the recreation use was changed from Class 2 to Class 1a for the period of May 15 through September 10. Numeric standards for indicator bacteria were also adopted for these segments, consistent with the table value standards in the Basic Standards. These revised recreation uses and numeric standards are consistent with federal requirements. The adopted uses are consistent with the existing or potential uses in these waters and the numeric standards describe water quality conditions that will protect the uses. EPA approves, without condition, all revisions to recreation uses and numeric standards.

Water Supply Designated Uses and Numeric Standards

The water supply designated use and associated numeric standards was adopted for Animas/Florida segment 13b. These revisions are consistent with federal requirements. The adopted designated use appropriately reflects the existing and potential use of this segment, and the numeric standards describe water quality conditions that will protect the use. EPA approves, without condition, all revisions to water supply uses and numeric standards.

Human Health-Based Numeric Standards

Human health-based "fish ingestion" numeric standards for organic chemicals were applied to Animas/Florida segment 13a, and "water + fish ingestion" standards were applied to segment

13b. These revisions are consistent with federal requirements at 40 CFR 131.11 because the adopted numeric standards describe water quality levels that will protect designated uses. EPA approves, without condition, the revisions to human-health based numeric standards.

Aquatic Life Designated Uses

For several segments, revised aquatic life designated uses were adopted. For segment 9, the Cold Water Class 1 use was replaced with a Cold Water Class 2 use. The lower portion of segment 4a was moved into segment 4b, and the aquatic life use for the new segment 4a was changed from Cold Water Class 1 to Cold Water Class 2. Finally, a new segment 3c was created and assigned a Cold Water Class 2 use. These revisions were supported by the evidence submitted, including the use attainability analysis prepared by the Animas River Stakeholders Group. These adopted revisions are consistent with federal requirements at 40 CFR 131.10 because the adopted designated uses appropriately reflect the existing and potential uses for these waters. EPA approves, without condition, all revisions to the aquatic life designated uses for individual segments.

Numeric Standards for the Protection of Aquatic Life Uses

For a number of segments, revisions were adopted to the numeric standards for the protection of aquatic life designated uses. A full set of numeric standards for inorganics and metals was applied to segment 13b to protect the Cold Water Class 2 use assigned to that segment. For new segment 3c, numeric standards were assigned to protect the designated uses adopted. For segments 3a, 4a, and 9, site-specific numeric standards were adopted, based in part on the conclusions of the UAA regarding what loading reductions and ambient concentrations are feasible. Although achieving these site-specific standards will require a reduction in loading for several parameters, the Region is concerned regarding gaps in the supporting information, and the resulting uncertainty in the estimates regarding achievable water quality levels. For example, the Region is concerned that there may be additional loading sources that can be reduced which were not accounted for in the UAA calculations.

The Region approves, without condition, all revisions to aquatic life numeric standards. However, regarding the standards which are based on projected post-remediation water quality levels, the Region expects that these standards will be reviewed as new information becomes available, and revised as appropriate. The Region may revise its decision regarding the extent to which these standards conform to Clean Water Act requirements if, for example, new information demonstrates that particular numeric standards do not accurately describe attainable water quality levels. Based on the Statement of Basis and Purpose, which emphasizes the importance of, and need for, future review these site-specific standards, it is the Region's understanding that the Commission shares these concerns.

Agriculture Designated Uses and Numeric Standards

An agriculture designated use was adopted for Animas/Florida segments 3c and 4a. Numeric standards to protect agriculture uses were adopted for segments 2, 3c, 4a, 7, and 8. These revisions are consistent with federal requirements. The adopted designated uses reflect the existing and potential uses for these segments, and the adopted numeric standards describe water quality conditions that will protect the agriculture uses. EPA approves, without condition, all revisions to agriculture designated uses and numeric standards.

Temporary Modifications

Segments where new or revised temporary modifications were adopted include Animas/Florida segments 2, 3a, 3b, 3c, 4a, 4b, 7, 8, and 9. These temporary modifications were adopted consistent with the authorizing provision, previously approved by EPA, which is included in Colorado's Basic Standards and Methodologies for Surface Waters. EPA approves, without condition, all revisions to temporary modifications.

Outstanding Waters

An Outstanding Waters classification was applied to Animas/Florida segment 1. This revision is consistent with the antidegradation rule contained in the Basic Standards and Methodologies for Surface Waters. EPA approves, without condition, all revisions to Outstanding Waters classifications.

Resegmentation, Renaming, and Consolidation of Segments

Various changes were adopted to re-segment, re-number, and/or re-configure particular segments or to change the description of segments. EPA approves, without condition, all such revisions.

II. EPA'S "NOT LIKELY TO ADVERSELY AFFECT" FINDING

EPA's approval of the State's water quality standards is considered a federal action which may be subject to the Section 7 consultation requirements of the Endangered Species Act (ESA). Section 7 of the ESA states that "all other federal agencies shall ... utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species..." and "each federal agency ... shall ... insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined to be critical..."

The Region has concluded that today's approval action is not likely to adversely affect any federally listed endangered, threatened, or proposed species. There are no occurrences of listed

species within the defined boundary of this action; however, there are federally listed fish in the San Juan River downstream of the confluence with the Animas River. The Region believes the effects of this action to the federally listed fish or their critical habitat occurring downstream can be reasonably concluded as insignificant or discountable. The Colorado Field Office of the U.S. Fish and Wildlife Service concurred with this finding in a February 15, 2002 letter.